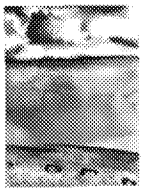

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December 19, 2014

Erik Smith, Industrial Water Quality Permits (Erik.Smith@state.mn.us)
Minnesota Pollution Control Agency
520 Lafayette Road North
St Paul, MN 55155-4194

Re: Minntac Tailings Basin NPDES/SDS Permit MN0057207

Dear Mr. Smith:

I represent WaterLegacy, a non-profit organization formed to protect Minnesota's water resources and the communities that rely on them. We have conducted a preliminary review of the pre-publication Minntac Tailings Basin Draft NPDES/SDS Permit (MN0057207) and Fact Sheet provided by your office, along with various background documents obtained through a Data Practices Act request.

WaterLegacy has some basic questions about the structure and policy of the documents we've seen thus far. We would appreciate a response to these questions in writing or an opportunity to meet with Minnesota Pollution Control Agency (MPCA) staff to obtain some clarification. WaterLegacy expressly does not waive the right to raise additional issues at any future stage of the permitting process.

Basis for "Compliance Schedule"
We don't understand on what legal authority the MPCA is proposing to provide U.S. Steel with a compliance schedule for any of the following pollutants: alkalinity, bicarbonates, hardness, specific conductance, sulfate and total dissolved salts (TDS). According to the attached Water Quality Limits spreadsheet prepared by MPCA, the Agency has concluded that there is a "Documented Exceedance of WQ Standard" for each of these pollutants. (See MPCA Spreadsheet, attached as Exhibit 1). Minnesota's water quality standards for these pollutants were all enacted in the early 1970s.

The U.S. Environmental Protection Agency has consistently advised that no schedule of compliance is appropriate for pre-1977 pollutants. (U.S. EPA Memorandum: Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits, May 10, 2007, attached as Exhibit 2). Moreover, the MPCA has provided notice for nearly 15 years that Minntac Tailings Basin compliance with these pre-1977 water quality standards would be required. In February 2000, the MPCA communicated to U.S. Steel's predecessor that the draft permit for the existing facility would include discharge limits for the pre-1977 pollutants:

> The MPCA would like to make USX aware that the draft reissued permit for the existing facility is likely to include discharge limits at least for the following pollutants: bicarbonates (305 mg/L), hardness (250 mg/L as calcium carbonate) specific conductance (1000 umhos/cm) and sulfate (10 mg/L April through September for the Sand River drainage, 1000 mg/L for all other situations). (MPCA Letter to USX: NPDES/SDS Permit MN0057207 Variance Issues, Feb. 16, 2000, attached as Exhibit 3).

Interestingly, it seems that 15 years ago the MPCA advised that a reissued permit would apply discharge limits to meet Minnesota water quality standards and that a variance would be needed to consider a departure from these limits.

The Application for an NPDES/SDS permit filed by U.S. Steel in December 2011 provides no basis to allow discharge of pollutants in excess of water quality standards. The Application states, "The applicant is not requesting a variance from applicable effluent limitation guidelines." (U.S. Steel Application for NPDES/SDS permit MN0057207, p. 15) WaterLegacy would be interested in understanding where MPCA derives its authority to provide effluent limits that do not protect beneficial uses.

Nature of "Compliance Schedule"

Even if one allowed for the sake of argument that the MPCA could develop one, WaterLegacy is baffled that the Agency has characterized the provisions of the pre-publication draft permit as a "compliance schedule." This document neither requires compliance nor schedules events that will predictably lead to compliance with water quality standards. There is no date in this document – ever – by which compliance with water quality based effluent limits is required.

In addition, the types of activities for which the Minntac Tailings Basin draft permit provides a schedule are not actionable steps that will result in reduction of pollutants to protect beneficial uses. The schedule requires multiple reports for MPCA review that may, eventually, develop a plan for compliance with standards. (Minntac Tailings Basin Draft NPDES/SDS Permit, pp. 24-28). Rather than directing dischargers to use their engineering expertise to comply with water quality-based standards, it seems that the MPCA has developed a practice of managing reports. This practice has not resulted in, and predictably will not result in private sector solutions to control pollution within the shortest reasonable period of time.

Groundwater Connected to Surface Water

It appears from the Fact Sheet that the Minntac Tailings Basin NPDES/SDS permit is designed on the premise that tailings basin seepage cannot be regulated under the Clean Water Act, whether or not the seepage is hydrologically connected to and contaminates surface water. (MPCA Fact Sheet for Minntac Tailings Basin Draft NPDES/SDS Permit, pp. 6-8). As a result, the monitoring locations are not designed to ensure identification and control of pollutants at the nearest points where Minntac Tailings Basin discharge daylights to surface waters and effects beneficial uses.

The MPCA has years of evidence from its own discharge monitoring reports and from 1854 Treaty Authority sampling showing that the Minntac Tailings Basin discharges to surface water and impairs beneficial uses. A recent sulfate isotope report prepared under the auspices of the Minnesota Department of Natural Resources (MDNR) makes the connection between the Minntac Tailings Basin and surface waters unequivocal. This MDNR Minntac sulfate isotopes report[1] found,

> Sulfate concentration at many of the downgradient locations were higher than expected based on the applied dilution effect . . .We calculate that up to 600 mg/L of "extra" sulfate is present in waters surrounding the basin, demonstrating that the oxidation of sulfide minerals in tailings does impact the sulfate concentration of seepage into both the Sand and Dark River watersheds.

The MDNR report explained,

> Most of the water stored in the Cell 1 and Cell 2 pools is cycled back to the plant for use in processing. A portion, however, seeps from the bottom of the basin and through the perimeter dike into the surrounding watersheds, namely the Sand River watershed to the east of the basin and the Dark River watershed to the west. The concentration of dissolved sulfate is elevated in the Tailings Basin pool waters, and thus the seepage water that discharges into the Sand and Dark River watersheds is elevated as well. (Minntac Sulfate Isotopes Report, p. 9)

In the face of clear evidence of the hydrological connection between Minntac Tailings Basin pollutants and surface waters, regulation under the Clean Water Act NPDES program is required to protect beneficial uses in connected surface waters under applicable law. *See Hawaii Wildlife Fund v. County of Maui*, 2014 U.S. Dist. LEXIS 74256; 44 ELR 20128 (D. Haw. 2014).

MPCA's plan for the Minntac Tailings Basin seems to disregard scientific information in order to allow a discharger to avoid pollution controls that would protect downstream natural wild rice and aquatic uses. Is the Agency really proposing that a discharger could circumvent surface water protections by diverting surface tailings basin seepage to seep from another part of the impoundment, irrespective of impacts on adjacent and hydrologically connected wetlands and watersheds? No science, law or policy would justify this result.

WaterLegacy appreciates the challenges in regulating a tailings facility that has operated outside the law not merely for years, but for a generation. However, the NPDES permit process was intended to protect beneficial uses by requiring compliance with water

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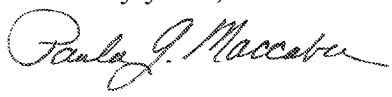
[1] M. Kelly, M. Berndt, and T, Bavin, *Use of sulfate and water isotopes to improve water and chemical balance estimates for water seeping from tailings basins (focus on US Steel's Minntac Basin)*, August 28, 2014, (Minntac Sulfate Isotopes Report) p. 3, available at http://files.dnr.state.mn.us/lands_minerals/reclamation/kelly_et_al_2014.pdf.

quality-based effluent limitations, not to serve as a license for environmental degradation in disregard of water quality standards.

We look forward to a productive discussion of these issues and ways to protect Minnesota's water resources from pollution and destruction.

Sincerely yours,



Paula Goodman Maccabee
Advocacy Director/Counsel for WaterLegacy

cc: Krista McKim, U.S. EPA Region 5 (McKim.Krista@epa.gov)
Tinka Hyde, U.S. EPA Region 5 (Hyde.Tinka@epa.gov)

Enclosed Exhibits

Exhibit 1 MPCA, Water Quality Limits Spreadsheet for Minntac Tailings Basin NPDES/SDS Permit.

Exhibit 2 U.S EPA, Memorandum: Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits, May 10, 2007.

Exhibit 3 MPCA Letter to USX: NPDES/SDS Permit MN0057207 Variance Issues, Feb. 16, 2000.